

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 BARBARA S. LINTHICUM,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL, Acting
14 Commissioner of the Social Security
Administration,

15 Defendant.

CASE NO. 3:16-cv-05048 JRC

ORDER GRANTING
UNOPPOSED MOTION FOR
ATTORNEY'S FEES PURSUANT
TO 42 U.S.C. § 406(b)

16 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local
17 Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S. Magistrate Judge
18 and Consent Form, Dkt. 5; Consent to Proceed Before a United States Magistrate Judge, Dkt. 6).

19 This matter is before the Court on plaintiff's Motion for Attorney's Fees Pursuant to 42 U.S.C. §
20 406(b) (*see* Dkt. 22). Defendant has no objection to plaintiff's motion. *See* Dkt. 24.

21 The Court may allow a reasonable fee for an attorney who represented a Social Security
22 Title II claimant before the Court and obtained a favorable judgment, as long as such fee is not in
23 excess of 25 percent of the total of past-due benefits. *See* 42 U.S.C. § 406(b)(1); *Grisbrecht v.*
24

1 *Barnhart*, 535 U.S. 789 (2002). When a contingency agreement applies, the Court will look first
2 to such agreement and will conduct an independent review to assure the reasonableness of the
3 fee requested, taking into consideration the character of the representation and results achieved.
4 *See Grisbrecht*, *supra*, 535 U.S. at 807, 808 (footnote omitted) (citations omitted). Although the
5 fee agreement is the primary means for determining the fee, the Court will adjust the fee
6 downward if substandard representation was provided, if the attorney caused excessive delay, or
7 if a windfall would result from the requested fee. *See Crawford v. Astrue*, 586 F.3d 1142, 1151
8 (9th Cir. 2009) (*citing Grisbrecht*, *supra*, 535 U.S. at 808).

9 Here, the representation was standard, at least, and the results achieved excellent (*see*
10 Dkt. 23, Attachment 3). *See Grisbrecht*, *supra*, 535 U.S. at 808. Following remand from this
11 Court for further consideration (*see* Dkt. 16), plaintiff was awarded benefits. There has not been
12 excessive delay and no windfall will result from the requested fee.

13 Plaintiff's total back payment was \$78,767.00 (*see* Dkt. 23, Attachment 3, p. 3). The
14 Social Security Administration has withheld \$19,691.75 for payment of attorney fees. Plaintiff
15 has moved for a net attorney's fee of \$11,477.60 (*see* Motion, Dkt. 22, p. 1), and the Court has
16 considered plaintiff's requested gross attorney's fee of \$16,500.00 (*see id.*) and the EAJA award
17 received by plaintiff's attorney in the amount of \$5,022.40. *Parish v. Comm'r. Soc. Sec. Admin.*,
18 698 F.3d 1215, 1221 (9th Cir. 2012).

19 Based on plaintiff's unopposed motion and supporting documents (*see* Dkts. 22, 23
20 Attachments 1, 2, 3, 4), it is hereby ORDERED that attorney's fees in the amount of \$16,500.00
21 be awarded to plaintiff's attorney pursuant to 42 U.S.C. § 406(b). The Social Security
22 Administration is to release the remaining backpay (the previously awarded EAJA fees in the
23 amount of \$5,022.40, and the remaining attorney fees withheld by the Administration) to
24

1 plaintiff. The net fee of \$11,477.60, minus any processing fees allowed by statute should be
2 mailed to Francisco Rodriguez, Attorney at Law, P.O. Box 31844, Seattle, WA 98103.

3 Dated this 31st day of January, 2018.

4 

5 J. Richard Creatura
6 United States Magistrate Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24